MONTANA LEGISLATIVE HISTORY

Chapter 409 19 95

Bill H 214 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 03	✓ C	Hearing Date(s)	Mar 08	✓ C
	Feb 11	✓ C		Mar 14	✓ C
		C			C
		C			C
Date Out	Feb 11	✓ C		Mar 15	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

	RETURNED TO HOUSE		
3/11	SIGNED BY SPEAKER		
3/15	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 189		
	EFFECTIVE DATE: 07/01/95		

HB 213 INTRODUCED BY MENAHAN, ET AL.

ESTABLISH LOCATION OF THE MONTANA LAW ENFORCEMENT ACADEMY ON GALEN CAMPUS OF THE MONTANA STATE HOSPITAL

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO APPROPRIATIONS		
1/16	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
1/23	FISCAL NOTE PRINTED		
2/16	TABLED IN COMMITTEE		
3/24	MISSED TRANSMITTAL DEADLINE FOR 67TH DAY		
	DIED IN COMMITTEE		

HB 214 INTRODUCED BY KOTTEL, ET AL.

GENERALLY REVISE LAWS RELATING TO REGISTRATION OF SEXUAL OFFENDERS

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO JUDICIARY		
1/16	FISCAL NOTE REQUESTED		
1/21	FISCAL NOTE RECEIVED		
1/25	FISCAL NOTE PRINTED		
2/03	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	98	2
2/15	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/08	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/21	2ND READING CONCURRED	50	0
3/22	3RD READING CONCURRED	41	8
3/23	RECONSIDERED PREVIOUS ACTION	48	1
3/23	ON MOTION RULES SUSPENDED TO PLACE BILL ON 2ND READING THIS DAY	43	7
3/23	2ND READING CONCURRED AS AMENDED	50	0
3/24	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	94	3
4/05	3RD READING AMENDMENTS CONCURRED	99	1
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 407		
	EFFECTIVE DATE: 10/01/95		

House BILL NO. 214

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE PUBLIC AND OTHER LAW ENFORCEMENT AGENCIES OF REGISTRATION INFORMATION NECESSARY FOR PUBLIC PROTECTION; PROVIDING IMMUNITY FOR LAW ENFORCEMENT AGENCIES FOR THE RELEASE OR FAILURE TO RELEASE REGISTRATION INFORMATION; AMENDING SECTIONS 44-5-301, 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, AND 46-23-507, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-5-301, MCA, is amended to read:

"44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information, except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions, except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These

documents ~~shall~~ must be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

(3) In addition to any other information authorized to be released under this section, a law enforcement agency is authorized to release relevant information that is necessary to protect the public, as provided under [section 12]."

Section 2. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections and human services for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 3. Section 46-18-254, MCA, is amended to read:

"**46-18-254. Release of sexual or violent offender -- duties of court and department.** A sexual or violent offender must be informed in writing at the time of sentencing of the duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced. The department of corrections and human services shall obtain the address ~~where~~ at which the person expects to reside upon release or discharge or suspension of the person's sentence. The department of corrections and human services shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 4. Section 46-18-255, MCA, is amended to read:

"**46-18-255. Sentence upon conviction -- restriction on employment.** A judge sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further

offenses by the defendant."

Section 5. Section 46-23-501, MCA, is amended to read:

"46-23-501. Short title. Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual or Violent Offender Registration Act"."

Section 6. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, ~~45-5-505,~~ 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

(4) "Violent offense" means:

(a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (4)(a)."

Section 7. Section 46-23-503, MCA, is amended to read:

"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official in charge. A sexual or violent offender who is released from the custody of the department of corrections and human services or the department of family services must be informed in writing prior to release of ~~his~~ the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall obtain the address ~~where~~ at which the person expects to reside upon ~~his~~ the

person's release and report the address to the department of corrections and human services. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 8. Section 46-23-504, MCA, is amended to read:

"**46-23-504. ~~Duty~~ Persons required to register -- procedure.** (1) A sexual or violent offender shall, within 14 days of ~~coming into~~ conviction or release from prison or within 14 days of entering a county ~~in which he resides or is temporarily domiciled~~ of this state for the purpose of residing or setting up a temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part, with the chief of police of the municipality or the sheriff of the county if ~~he~~ the offender resides in an area other than a municipality.

(2) At the time of registering, the person shall sign a statement in writing giving the information required by the department. The chief of police or sheriff shall fingerprint the person, unless the person's fingerprints are on file with the department of justice, and shall photograph the person. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department and the department of justice and to the sheriff of the county where the person resides, if registration is with the chief of police.

(3) The person registered under this section is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration.

(4) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 14 days after entry of the judgment."

Section 9. Section 46-23-505, MCA, is amended to read:

"**46-23-505. ~~Change~~ Notice of change of address -- duty to inform -- forwarding of information.** If a person required to register under 46-18-254, 46-18-255, and this part changes ~~his~~ residence, ~~he~~ the person shall within 10 days give written notification of ~~his~~ the person's new address to the law enforcement agency with whom ~~he~~ the person last registered. The law enforcement agency shall, within 3 days after receipt of ~~such~~ the information, forward it to the department, the department of justice, and the local law enforcement agency having jurisdiction over the new place of residence and shall forward a copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency

having jurisdiction over the new place of residence."

Section 10. Section 46-23-506, MCA, is amended to read:

"**46-23-506. Duration of registration.** (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the person's life, except as provided in subsection (2) of this section or during a period of ~~10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison~~ time during which the person is in prison.

~~(2) A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part.~~

(2) At any time after 10 years since the date of the offender's last conviction for a sexual or violent offense, the offender may petition a district court for an order relieving the offender of the duty to register under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society."

Section 11. Section 46-23-507, MCA, is amended to read:

"**46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register under 46-18-254, 46-18-255, and this part ~~may~~ shall be ~~sentenced to a term of imprisonment~~ imprisoned in the state prison for a term of not less than ~~90 days or a fine not to exceed $250, or both~~ 2 years or more than 5 years or may be fined not more than $10,000, or both."

NEW SECTION. **Section 12. Sexual or violent offenders -- release of information to public -- when authorized -- immunity.** (1) A law enforcement agency is authorized to release relevant and necessary information regarding sexual or violent offenders registered under 46-18-254, 46-18-255, and this part to the public when the release of information is necessary for public protection.

(2) A governmental entity and its employees, as defined in 2-9-101, are immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the governmental entity or its employees acted with gross negligence or in bad faith. The authorization and immunity in this section apply to information regarding a person required to register under 46-18-254, 46-18-255, and this part. The immunity provided under this section applies to the release of relevant information to other governmental entities and employees and to the general public.

(3) Except as otherwise provided by law, this section may not impose liability upon a governmental entity or its employees for failing to release information as provided in subsection (2).

(4) Information authorized to be released under this section is public criminal justice information as defined in 44-5-103.

NEW SECTION. **Section 13. Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [section 12].

NEW SECTION. **Section 14. Two-thirds vote required.** Because [section 12] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to persons convicted of a sexual or violent offense before [the effective date of this act], as well as to persons convicted of a sexual or violent offense after [the effective date of this act], regardless of the date of the crime.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0214, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill generally revising the laws relating to the registration of sexual offenders; extending registration requirements and employment restrictions to certain violent offenders; and making the registration of violent offenders mandatory.

ASSUMPTIONS:
1. This bill would create a lifetime registry of offenders convicted of the offenses defined in HB214. The proposed registry would operate much like the current sex offender registry.
2. Of total inmates in FY94, 831-997 or 45-54% would fall under the provisions of HB214.
3. The current sex offender registry contains over 1,400 offenders names and addresses. A registry for HB214 will be much larger, especially given the lifetime provisions of the bill.
4. Failure to register for offenses defined will result in a 2 - 5 year sentence in the Montana State Prison (MSP). It is impossible to determine the number of offenders that will fail to register, but it is assumed that there will be some offenders who will not register, thus increasing the population at MSP.
5. There will be computer programming time needed to implement provisions of this bill, estimated at 100 hours at $50 per hour = $5,000.
6. All original photographs and finger prints will remain on file at the Department of Corrections and Human Services (DCHS). DCHS will need to purchase a PC, color scanner, color laser printer, and associated software - or other undetermined photographic equipment, and/or services to provide quality duplicates for local law enforcement agencies.
7. Electronic transfer of information is not possible at the state or county level without the additional equipment.

FISCAL IMPACT:

Expenditures:

	FY96 Difference	FY97 Difference
DCHS:		
Operating Expenses	$6,000	$1,000
Equipment	$15,700	
Total General Fund Impact	$21,700	$1,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
As the life-time register for sexual and violent offenders increases, DCHS may need additional FTE and computer equipment including imaging equipment and possibly disk storage to effectively maintain this registry and disseminate the information efficiently.

Dave Lewis 1.20.95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Deb Kottel 1-25
DEB KOTTEL, PRIMARY SPONSOR DATE

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0214	KOTTEL, DEB 1/14	2/03	GENERALLY REVISE LAWS RE: REGISTRATION OF SEXUAL & VIOLENT OFFENDERS	PASS AS AMENDED 2/11 VOTE: 17-1		2/13
HB0217	JOHNSON, JOHN 1/16	1/26	REQUIRE THAT SCHOOL EMPLOYEES BE TOLD THEY'RE LEGALLY PROTECTED FROM ASSAULT	PASS AS AMENDED 2/8 VOTE: 19-0		2/10
HB0232	JORE, RICK 1/16	1/26	REVISE CONCEALED WEAPONS PERMIT LAW	DO PASS 1/31 VOTE: 16-3		2/01
HB0234	HIBBARD, CHASE 1/16		REQUIRE CERTAIN LOAN & CREDIT AGREEMENTS BE WRITTEN TO BE ENFORCEABLE	VOTE:	BUSINESS & LABOR	
HB0240	SOFT, LOREN 1/17	1/26	ESTABLISH JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION	PASS AS AMENDED 2/16 VOTE: 18-0		2/17
HB0244	MENAHAN, RED 1/17	1/30	DETENTION WHILE AWAITING SENTENCE OR DURING APPEAL FOR CERTAIN OFFENSES	TABLED ON 02/02 VOTE: 13-6		
HB0250	MCCULLOCH, LINDA 1/17	1/30	REVISE SANCTIONS FOR MINOR TRAFFIC OFFENSES	PASS AS AMENDED 1/30 VOTE: 15-4		1/31
HB0253	BARNHART, BEVERLY 1/18	2/02	ALLOW COURT ORDER EDUCATIONAL PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN	PASS AS AMENDED 2/8 VOTE: 19-0		2/10
HB0256	SOMERVILLE, ROGER 1/18	2/03	INCREASE DRUNK DRIVING PENALTIES; USE SOME FINES FOR JAWS OF LIFE TOOLS POSTPONE ACTION 2/9	PASS AS AMENDED 2/16 VOTE: 18-1		2/17
HB0258	BOHLINGER, JOHN 1/18	2/07	CREATE CRIMINAL OFFENSE FOR CONCEALED WEAPON ON SCHOOL PROPERTY	TABLED ON 02/11 VOTE: 11-8		
HB0271	MCCULLOCH, LINDA 1/18	2/03	REVISE SUMMARY DISSOLUTIONS - ALLOW SUMM. DISSOLUTION WITHOUT HEARING POSTPONE ACTION 2/8	TABLED ON 02/11 VOTE: 13-6		
HB0290	DEBRUYCKER, ROGER 1/20	2/01	ISOLATED LAND ACCESS PROCEDURE	TABLED ON 02/08 VOTE: 19-0		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 3, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 157, HB 214, HB 256, HB 271
Executive Action: HB 160 POSTPONE ACTION

Closing by Sponsor:

REP. MC CULLOCH closed with remarks that the issue is about the procedure involved after a couple have already filed for divorce, court loads and priorities rather than divorce or the convenience of divorce. She said the bill would serve to reduce clogging in the courts, take away anxiety involved in unnecessary court hearings and it will reduce the costs of attorney fees which are not necessary in these cases. She said neither she nor the proponents advocate divorce, but they advocate saving the use of the courts for those who have committed a crime.

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CHAIRMAN CLARK remarked that the committee would hear HB 214 and HB 157 together since there would be an attempt to combine them due to their similarities. He relinquished the chair to **VICE CHAIRMAN ANDERSON.**

HEARING ON HB 214 and HB 157

Opening Statement by Sponsors:

REP. KOTTEL, HD 45, presented HB 214 as one which asks for lifetime registration of violent offenders. She stated that Montana's current law requiring registration of sex offenders is only for a ten-year period of time. Failure to register currently is a misdemeanor. HB 214 asks that registration become lifetime, that all violent crimes be included and makes failure to register a felony. She elaborated on those points.

REP. MATT DENNY, HD 63, brought before the committee HB 157 which provides for life sentencing and lifetime registration and supervision of sex offenders. The bill was drafted at the request of the Governor's Council on Corrections and Criminal Justice Policy. He elaborated on the provision for life sentencing to the corrections system which is not subject to reduction in recognition that sex offenders are not curable, and on the provision for lifetime supervision and registration for continuing education and treatment of the offender. The bill also increases the penalties for failure to register or to participate in treatment programs. It also provides for protection of the general public while protecting the privacy of the offender.

Proponents' Testimony:

Rick Day, Director, Department of Corrections and Human Services, (DCHS), said HB 157 addresses all the components necessary to deal with sex offenders. He felt it was an innovative approach designed to provide an effective method to respond to those who have committed a sexual offense. He felt the combination of lifetime registration with supervision and treatment would

provide for a safer Montana. On behalf of the Governor and the department, he urged the committee's support.

Dave Ohler, DCHS, offered some technical amendments to HB 157 and explained them. **EXHIBIT 8**

John Connor, Montana County Attorneys Association, appeared as a proponent of HB 157 on behalf of the Department of Justice and the Attorney General's Council on Law Enforcement. He cited the need for this legislation is enhanced by the fact that one-third of the sex offenders leave prison by means of discharge rather than parole without having completed the sex offender program. They also support HB 214 and especially like the provision of the notification of victims.

{Tape: 2; Side: B; Approx. Counter: 24.0}

Informational Testimony:

A letter from **Mike Salvagni, Gallatin County Attorney,** was presented as a proponent by **Mr. Connor. EXHIBIT 9**

Proponents' Testimony Continued:

Henry Hibbard appeared to support HB 214 and suggested an amendment that any person who deals with children or health care for the elderly be fingerprinted as part of a background check to be used as consideration for employment (not a requirement).

Becky Malensek testified concerning her personal experience with the early release of her former husband convicted of a sexual offense who did not take advantage of treatment while incarcerated. She emphasized that stronger follow-up is necessary to protect children from those who will re-offend. She also discussed the disparity between the protected rights of the offender versus the rights of victims and potential victims.

Jane Christman rose in support of HBs 157 and 214. She testified about the death of her son eight years ago at the hands of a released repeat sex offender, Robert Hornbeck.

Derek VanLuchene testified in support of HBs 157 and 214 as the brother of the eight-year-old boy who was murdered in Libby. He currently is a member of law enforcement and testified from the perspective of a victim as well as from his profession.

Ron Silvers, Vice President, Montana Sex Offender Treatment Association, strongly supported these bills. He said the Association takes these issues seriously and described how they address them. He said they do not view lifetime supervision as a punishment, but as an obligation and responsibility.

CHAIRMAN CLARK resumed the chair.

Sandy Heaton, Sex Offender Therapist at Montana State Prison, shared some of her experiences from having worked with both incarcerated and non-incarcerated sex offenders. She spoke as a proponent and agreed with previous testimony. She elaborated on the triggers for the offense.

John Strandel, Cascade County Undersheriff, Montana Peace Officer's Association, served on the subcommittee which reviewed the sex offenders information which was being presented. He rose in support of both bills and specifically testified to facts concerning sex offenders.

Dana Ball reiterated her testimony that she did not think there could be enough laws passed to protect society from sex criminals. She elaborated on the testimony concerning her son who was victimized over a long period of time by a sex offender and his lifetime maintenance as a victim resulting in intense treatment and continual supervision.

{Tape: 2; Side: B; Approx. Counter: 54.2}

Mike Ferriter, Chief of Community Correction Bureau, DCHS, presented written testimony in support of HB 157. **EXHIBIT 10**

John Thomas, Chairman, State Parole Board, spoke in support of HB 157 and gave the committee their current guidelines in consideration of release of sex offenders.

Opponents' Testimony:

Scott Crichton, Executive Director, ACLU, reluctantly rose in opposition to both HB 157 and HB 214. He submitted written testimony. He said that though it is well-intended, he doubted it would achieve the results hoped for. **EXHIBITS 11 and 12**

{Tape: 3; Side: A; Approx. Counter: 10.8; Comments: }

Questions From Committee Members and Responses:

REP. TASH asked **Mr. Crichton** if this legislation would result in litigation.

Mr. Crichton said he believed it would.

REP. TASH asked if, in the case of people who haven't had proper rehabilitation, that wasn't an encroachment on their civil liberties.

Mr. Crichton thought that the need for people to admit to their crimes is central for their successful treatment. He felt that impediments to that in treatment result when they are required to give self-incriminating evidence of offenses committed for which they have not been convicted.

REP. TASH asked **Mr. Crichton** to be specific in the areas of treatment he found lacking in regards to rehabilitation.

Mr. Crichton said his sense was they need more resources attached to both sex treatment inside and outside the criminal justice system including fiscal relief.

REP. MC GEE asked **Ms. Heaton** to comment on the elements included in the treatment program described by **Mrs. Ball** in testimony.

Ms. Heaton refuted the element described by **Mrs. Ball** and went on to elaborate on what is included.

REP. MC GEE asked what kinds of costs are involved in a continuing treatment program for sexual offenders.

Ms. Heaton said her understanding was that the intent was that the offender would finish his primary treatment and then would go on an aftercare status determined by the therapists and probation and parole. She did not feel the cost would be great.

REP. MC GEE asked **REP. DENNY** who would pay for treatment for lifetime sexual offenders.

REP. DENNY said the actual outlays for treatment are not covered under this bill.

REP. MC GEE asked if this would apply to existing sexual offenders.

REP. DENNY said the life sentencing portion would not apply to current convicts. He believed life registration would apply upon their release.

{Tape: 3; Side: A; Approx. Counter: 23.3}

REP. MC GEE noted that article 2, section 3 of the Montana Constitution refers to the rights of people and the corresponding responsibilities; and article 2, section 22 speaks to cruel and unusual punishment; and article 2, section 28 speaks to state supervision before rights are restored. Given those three sections, he asked **Mr. Crichton** if he felt there would be a constitutional challenge to lifetime registration for sexual offenders.

Mr. Crichton said his understanding was that it could be questioned if registration was regulatory in nature or punishment.

REP. MC GEE asked if a murderer is sentenced to life in prison for the crime, would the ACLU consider that cruel and unusual punishment.

Mr. Crichton thought the definition of cruel and unusual punishment was defined constitutionally about what the state metes out to its citizens. He recalled that the Bill of Rights was to protect citizens from its government from having too much power and influence in their private lives.

REP. MC GEE asked if he considered it cruel and unusual punishment when a person is convicted of deliberate homicide and sentenced to the Montana State Prison for life.

Mr. Crichton said he would look each case differently as he expected the court would do. Sentencing someone to life imprisonment isn't in and of itself cruel and unusual punishment. Some instances warrant it.

REP. MC GEE asked if the legislature deemed it appropriate to equate other crimes to deliberate homicide necessitating life imprisonment, would he consider that cruel and unusual punishment.

Mr. Crichton answered, "Sentencing somebody to life but then holding the responsibility for the commitment for life could be construed as trying to end-run the state's constitutional protection that once you have served your time, you are reinstated as a citizen. It appears to me that you are saying that we want to control you for life but you are on your own until you screw up and then we'll control you some more by bringing you back in our custody."

REP. MC GEE asked him to tell this committee what is meant by corresponding responsibilities [in reference to article 2, section 3,] to those individual rights. He read this section to the members of the committee.

Mr. Crichton responded that he probably has a higher sense of responsibility than the average citizen in terms of what is a responsibility in participating in the government and being a productive member of the community. At what point an offender is finished with his punishment is in question. He said he understood that it cannot be determined if a victim is ever finished with carrying the burden of being victimized. He said that the criminal justice system seems open-ended in this regard. He said that from a civil liberties standpoint it is problematic to view the numbers and types of crimes the state will be given the authority to track.

REP. MC GEE referred to article 2, section 28 to discuss the rights of the convicted. "Full rights are restored by termination of state supervision for any offense against the state." He asked if life sentencing would work toward prevention.

Mr. Crichton said he saw the principles of prevention and reformation as linked and they needed to look toward the

potential of people becoming productive members of society. People who are deemed likely to re-offend can be kept behind bars through the criminal justice system. He was concerned about saying, "Once a sex offender, always a sex offender." He questioned this as the way to get at sexual victimization in the society. He was not sure placing a deterrent at the front end is convincing.

REP. SOFT asked how long **Ms. Heaton** had been working with sex offenders at the prison and further asked about some types of treatment and asked her for data about follow-up success rates.

Ms. Heaton answered that she had worked with the program 15-16 years. She said their data is not complete, but she elaborated on the experience she could and said that these data were accompanied with disclaimers.

REP. SOFT asked if they would be establishing more data with regards to recidivism or success in treatment.

Ms. Heaton said they were working on it.

REP. SOFT wondered if these bills would prove helpful in gathering more accurate data.

Ms. Heaton said it should though it would not be 100%.

REP. SOFT asked **Mr. Ohler** how they would be tracked and would this program be effective.

Mr. Ohler said a key component to registration is supervision and that is the reason the bill requires lifetime supervision of sex offenders.

REP. SOFT wanted to go on record as mandating that there is a very strict way to follow up and for that data to come back to the next legislature.

{Tape: 3; Side: A; Approx. Counter: 45.7}

REP. SMITH asked **Mrs. Ball** for details about his follow-up care and need for supervision. **Mrs. Ball** detailed his current treatment and ongoing problems.

REP. SMITH asked if his treatment program included sexual fantasy and masturbation which was referred to in earlier testimony.

Mrs. Ball said she was challenged by the hospital where her son was treated to obtain a copy of the sex offenders treatment program that is used in the Montana State Prison system where his perpetrator was sent. She related the difficulty in obtaining it and there is a section written by **Michael Scolatti** referring to that. She could not affirm that they are using that part of the treatment. Her son's treatment did not include it.

REP. SMITH was concerned about leaving the responsibility to the offender to register. She asked about the follow up to registration as required in this bill.

Ms. Heaton said most of that takes place in the community. They will sign a registration release when they leave the prison and they are expected to sign up when they get into a community. When they are on parole follow up is very easy. It is a problem when someone discharges their sentence and they are not under any jurisdiction.

REP. SMITH asked if the community follow up programs are like AA meetings.

Ms. Heaton said the Montana Sex Offender Treatment Association programs are much like what is used in the prison.

REP. SMITH wanted to know if they use the 12-step concept.

Ms. Heaton said not all use that concept though some do.

REP. SMITH asked how many sex offenders in the prison are under treatment and whether it is a volunteer program.

Ms. Heaton replied approximately 100 were in voluntary treatment.

REP. SMITH cited the statistics that 40 enter prison and 30 leave per month and wanted to know how many are sex offenders who have completed treatment. She also asked if there was a waiting list.

Ms. Heaton said she could not answer the first question and that there is a long waiting list causing several months to a year to get into the treatment program.

REP. SMITH asked if the co-dependency program is related to the sex offender program.

Ms. Heaton said they were separate programs but they share inmates in common. It is not uncommon for them to have chemical dependency issues and sex offender issues but are dealt with in different groups.

REP. SMITH questioned the retroactivity concept and how that would work.

Ms. Heaton said she did not know the legalities of a retroactive concept, but that supervision and registration isn't all punitive.

REP. MOLNAR asked a question on behalf of **REP. CHRIS AHNER** from **Mrs. Ball** if her son were to become a perpetrator, would she have any problems saying that he would have to be under lifetime supervision.

Mrs. Ball answered, "As his mother, if he became a perpetrator, I would have a problem if there were no laws to protect his victims and I would have a problem if there was nothing I could do except pray that he didn't kill somebody. As a mother I would want every law in place that could give him some boundaries. He has none, he doesn't know right from wrong when it comes to sexual acting out because he never learned."

{Tape: 3; Side: B}

REP. MOLNAR asked **Mr. Crichton** on behalf of **REP. AHNER** if the offender is given the choice between imprisonment and castration, would that still be infringing upon their rights.

Mr. Crichton said he did not know how to answer that. It seemed to him that would raise the question of cruel and unusual punishment.

REP. MOLNAR re-asked **REP. AHNER'S** question in terms of the choice between lifetime imprisonment or lifetime supervision with mandatory treatment and whether that was a violation of their constitutional rights.

Mr. Crichton said ultimately that would be the kind of thing the supreme court would take a look at as laws like this are put in place and enforced.

Closing by Sponsors:

REP. KOTTEL submitted a summary of laws of selected states which have sex offender registration. **EXHIBIT 13** She cited a constitutional challenge in Washington which had a retroactive provision in it and that the constitutionality of that ex post facto law was upheld in their Supreme Court. She said she believed that the scales of justice have tipped toward the criminal and that these bills are a start to bring those scales back into balance.

REP. DENNY was reminded as he participated in the hearing that many voices say the problem can't be solved this way, but he had not seen any realistic alternatives. He believed these bills represented those alternatives. He closed by quoting, "We need to think about the rights of the children and the victims."

CHAIRMAN CLARK said these two bills would be put in a subcommittee of both sponsors and **REP. MC GEE** who would meet to combine the bills to present to the committee as a workable solution.

Motion: **REP. CAREY MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on three 60-minute tapes.}

EXHIBIT 12
DATE 2/3/95
HB 214

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

February 3, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton. I am the Executive Director of the American Civil Liberties Union of Montana. I am here today to voice opposition to HB 214.

Most of the comments I made on HB 157 would apply to HB 214. Additionally there is a real ex post facto problem in Section 15 which would make this registration apply retroactively to all persons who have ever been convicted. This is clearly a punitive bill. The lifetime registration, I think, is violative of our Constitution's restoration rights. Furthermore, even though the convicted person would be eligible after ten years to petition the court for relief from that obligation, I believe this is a draconian measure. Such a petition would be public and would undoubtedly cause press coverage and public furor. It would make the individual subject to a witch hunt. It would violate the rights to privacy and human dignity. Furthermore, it is unlikely to have any effect on the crime rate. This kind of knee jerk response to what is obviously a problem does more harm than good.

Worse, the new Section 12 which provides for release of the information if the release is "necessary for public protection" is obviously an ill-reasoned attempt at legislation. The Constitution states that individual privacy shall be inviolate absent a compelling state interest. There is no compelling state interest requirement in this section and, perhaps worse, it would appear that this section would authorize a clerk to release whatever he or she thought was "necessary for public protection." There are no judicial safeguards, nor are there any standards set forth which would allow anyone, much less a low level staff member, to determine what factors should be reviewed in deciding whether or not release was necessary. The immunity provisions may in fact encourage release.

These bills simply contradict our basic sentencing policy of the State of Montana. Section 46-18-101(2), Montana Code Annotated sets forth the basic policy of the state of Montana. It reads:

> The correctional policy of the State of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions. Corrections laws and programs must be implemented to impress upon each individual the responsibility for

> obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

Neither HB 157 or HB 214 is at all consistent with the ideas of rehabilitation and consideration of individual characteristics, circumstances, needs and potentialities. Rather, each contains a blanket assumption that every person who is convicted of a sex crime will be and remains a sexual pervert for life. That simply is not true.

Prepared by the North Dakota
Legislative Council staff for

May 1994

SEX OFFENDER REGISTRATION LAWS - SUMMARY OF LAWS OF SELECTED STATES

EXHIBIT 12
DATE 2/3/95
HB 214

BACKGROUND

At least 21 states (Alabama, Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Louisiana, Maine, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Oklahoma, Ohio, Rhode Island, Tennessee, Utah, and Washington) have enacted sex offender registration laws. Each state has different requirements as to who must register, how they register, how long the offenders must be registered, and penalties for failure to register. The majority of the statutes appear to apply to all types of sex offenders who have at least one conviction; some apply only after two or more convictions; and some apply only to people who have sexually assaulted or abused children or minors.

Most laws require courts or correctional officials to inform an offender of the duty to register. Many require a state official to have the offender sign a form acknowledging that the offender has been so informed. Frequently, the official must obtain the offender's anticipated address upon release and forward it to a law enforcement agency, but that does not eliminate the offender's duty to report. The laws usually require the offender to report whenever the offender moves.

The duty to report is usually for a fixed period, most often 10 years. It appears that only one state, Louisiana, explicitly makes the reporting information available to the public, while most states keep the information confidential and available only to law enforcement officials.

PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS

Most of the states with sex offender registration laws impose a penalty for violation of the registration requirement. With the exception of Alabama, Arizona, and Washington, the remainder of the states with sex offender registration laws classify a violation as a misdemeanor. These penalties range from 90 days to one year in prison, a fine, or both.

Several states impose a harsher penalty for subsequent violations of the registration requirement. In Alabama a violation carries a penalty of one to five years in prison and a fine of up to $1,000. The penalty for a violation in Arizona is a Class 6 felony, which carries a maximum penalty of one year in prison for a first offense. In Washington a violation is a Class C felony, which carries a maximum penalty of five years in prison or a fine

or both, if the original crime committed was a Class A felony. If the crime committed was other than a Class A felony, then violation of the registration requirement is a gross misdemeanor.

SELECTED STATES' LAWS

North Dakota

In North Dakota a person is required to register if convicted of sexual imposition, gross sexual imposition, corruption or solicitation of a minor, sexual abuse of wards, sexual assault, or incest.

Any sex offender released by a facility or institution where the person required to register is confined must be informed of the duty to register. The official in charge of the facility must obtain the offender's expected address upon discharge, parole, or release. The official must forward the information to the Attorney General. The Attorney General must forward the information to the appropriate law enforcement agency having jurisdiction.

The person required to register must comply with the requirement for 10 years after conviction or after release from incarceration, whichever is later. Failure to comply with the registration requirement is a Class A misdemeanor punishable by a maximum penalty of one year imprisonment, a fine of $1,000, or both.

Registration information, which includes a statement, photograph, and fingerprints, is open to inspection by the public.

Arkansas

The Arkansas law applies to persons who have been convicted a second or subsequent time of one of the following offenses when the victim is under 18 years of age: rape, first and second degree carnal abuse, first degree sexual abuse, first and second degree violation of a minor, and incest. The law also applies to violations of prior Arkansas law or substantially equivalent offenses in other states. Upon conviction, the court must certify that the person is a habitual child sex offender.

A habitual child sex offender must register with the municipal police chief, or the sheriff if the offender lives in a rural area, within 30 days of moving into a county. The offender must give written notification to the agency where the offender is registered within 10 days of relocating to a new residence and the agency must report the new address to the Arkansas State Police and the new local law enforcement agency.

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The duty to register continues for 10 years from the date of conviction or the date of parole, discharge, or release, whichever is later. The courts and the person in charge of a prison, hospital, or other institution must explain the duty to register to any habitual child sex offender over which they have charge. They must require the offender to sign a form; obtain the offender's expected new residence address; and provide copies of the form to the offender, the state police, and the local law enforcement agency. The information is closed to the public and may only be obtained by law enforcement officers and individuals specifically authorized by law.

Louisiana

The Louisiana law defines a sex offense as rape and sexual battery, bigamy and incest, sexual offenses involving a minor, and crimes against nature. Any adult who has plead guilty to or been convicted of a sex offense must register with the parish sheriff where the offender lives. Within 45 days of establishing residence in Louisiana or 30 days after conviction or release, the individual must provide the sheriff with the following information: name, address, place of employment, conviction information, Social Security number, aliases, a photograph, and fingerprints.

The offender is required to give written notification to the sheriff within 10 days of the change of address. If the offender moves to a new parish, the offender is also required to notify the sheriff of the new parish in which the offender relocates.

An offender who fails to register is subject to a fine of up to $1,000, imprisonment for up to one year, or both. For a second or subsequent offense, the penalty increases to imprisonment for up to three years with no parole, probation, or suspension of the sentence.

The Louisiana law requires the court to give written notification of the registration requirements to anyone charged with a sex offense. Similar notification must be given by the Department of Public Safety and Corrections when a sex offender is released from prison. The department must also give written notice of the registration requirement to persons renewing their driver's license or identification card, or when persons from other jurisdictions apply for a Louisiana driver's license or identification card.

The law specifies that the registration requirement applies for 10 years from the date of conviction or the date of release from an institution or facility, whichever is later. An offender may petition the court to be relieved of the duty to register. The court must consider the nature of the offense, the offender's preconviction and postconviction behavior, and other factors.

The court can grant relief only on clear and convincing evidence that future registration will not serve the law's purpose.

The law specifically authorizes all criminal justice agencies, including the court, to release relevant and necessary information regarding sex offenders to the public whenever the release is necessary for public protection.

Montana

In Montana a sexual offender is anyone convicted of sexual assault against a victim under 16 years of age, intercourse without consent, deviate sexual conduct, incest, or sexual abuse of children.

Any sexual offender released by the Department of Corrections and Human Services or Family Services Department must be informed, in writing, prior to release, of the offender's duty to register. The releasing official must obtain the offender's expected address and report it to the corrections department, which must forward it to the appropriate local law enforcement agency. The offender must register with the local police chief or sheriff within 14 days of moving into a county. Any registered person who moves must, within 10 days, notify the law enforcement agency. The law enforcement agency is required to notify the appropriate new law enforcement agency that the person will be relocating in the area. It is unclear from the statute as to whether this includes notification of law enforcement agencies if the offender moves out of state.

The duty to register lasts for 10 years. Any person who knowingly fails to register is subject to 90 days in prison, a fine of up to $250, or both.

Rhode Island

In Rhode Island any person convicted of a sexual offense under Rhode Island law, or of first degree sexual assault in another state, must register with the local chief of police within 60 days. The law requires officials of any jail, prison, state hospital, or any other institution where a convicted sex offender or mentally disordered sex offender has been confined to inform the inmate before release, discharge, or parole of the offender's duty to register. The official must require the person to read and sign a form stating that the duty to register has been explained to the offender. The official must obtain the address where the person expects to live and report it to the Attorney General.

Courts have the same duty to inform, obtain a signed acknowledgment, obtain an address, and forward information to the Attorney General and law enforcement agencies for offenders released on

EXHIBIT 13
DATE 2-3-95
HB 214

probation or otherwise discharged from the court system. In addition, youths who have been adjudicated guilty of a sex offense are subject to the registration requirement when they are discharged from the state training school.

Anyone subject to registration who moves must notify, within 10 days, the law enforcement agency and provide the agency with the anticipated new address. The law enforcement agency must inform the appropriate law enforcement agency in the jurisdiction where the offender is relocating. Failure to register is a misdemeanor punishable by 90 days in jail and one year of probation.

Registration information consists of fingerprints, a photograph, and a written statement of the registrant as required by the Attorney General. These records are kept confidential and only available to law enforcement officials.

Tennessee

The Tennessee Bureau of Investigation is required to establish "a central registry of sexual offenders modeled after statutes in other states." The registry must include (1) validated offenders from files of the Department of Human Services; (2) persons arrested for sexual offenses; and (3) persons convicted of sexual offenses.

The law requires the Correction, Youth Development, and Human Services departments and local law enforcement agencies to cooperate in creating and updating the registry.

Utah

The Utah law applies to persons convicted of incest and a wide variety of sexual offenses committed against both adults and children, persons committed to a state mental hospital after committing sex offenses, and persons convicted of a comparable crime in another state.

The law requires the Department of Corrections to collect, analyze, and maintain information on sex offenders and sex offenses. All law enforcement agencies must inform the department of all sex offense reports, complaints, and arrests. Within 10 days of conviction, the court must inform the department and forward a copy of the judgment and sentence. All sex offenders must be registered by the department upon a sentence to probation, commitment to a correctional facility, parole, release to a community program, and termination of parole or probation. The registration requirement lasts for five years from the end of the sentence.

Sex offender registration information is confidential and only available to law enforcement agencies and the state Education Department. A sex offender who knowingly fails to register is guilty of a Class A misdemeanor and must serve not less than 90 days in prison and at least one year of probation.

California

California has the oldest sex offender registration program in the United States. Since 1947 persons convicted in California of certain sex offenses have been required to register. A person determined to be a mentally disordered sex offender or convicted in another state of a sex offense is also required to register. California statutes have been recently revised and now direct a sex offender, along with other requirements, to provide a blood and saliva sample at the time of registration for DNA identification purposes.

Nevada

In Nevada not only are sex offenders required to register, but any person convicted in any state of a felony offense that is punishable by imprisonment of one year or more must also register.

Alabama

In Alabama, "a person who has been convicted of a felony more than twice must register," as well as all sex offenders.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/3/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		≠
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2.3.95

BILL NO. HB 214 SPONSOR(S) Rep. Kottel

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jane Christman		✓	
Derek VanAlstyne		✓	
Becky Malusek		✓	
Scott Crichton	ACLU/MT		✓
Greg Gilchrist	1019-8th Ave So #	X	
John G Thomas	BOP	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 11, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action:

HB 41	DO PASS AS AMENDED
HB 84	DO PASS AS AMENDED
HB 117	DO PASS AS AMENDED
HB 150	DO PASS AS AMENDED
HB 157	DO PASS AS AMENDED
HB 214	DO PASS AS AMENDED
HB 60, HB 93, HB 258	TABLE
HB 271, HB 382, HB 388	TABLE
HB 332, HB 378	DO PASS

Discussion: **REP. BOHARSKI** said that, in speaking to some judges, he had determined that they wanted to make sure that the court had those offenders and since there is no cure for them, to change all of the sentences.

REP. KOTTEL said these were not only lifetime registrations but also lifetime sentences and pointed out the portions which answered his concern.

REP. BOHARSKI described his concern in more detail and asked how the process would work to alleviate those concerns and the sponsor clarified that process. They continued to discuss the wording of the bill and clarified its intent and result.

Mr. MacMaster asked if the sponsor's intent in amendments 11 and 12, dealing with the penalty provision, was to make the bills read the same. If that was the intent, there were conflicts. The sponsor desired to deal with that in HB 214 amendments.

EXECUTIVE ACTION ON HB 214

Motion: **REP. KOTTEL MOVED HB 214 DO PASS.**

Motion: **REP. KOTTEL MOVED HB 214 BE AMENDED ACCORDING TO ITEMS 4 THROUGH 9 OF EXHIBIT 2.**

Discussion: **REP. KOTTEL** described the reason for these amendments to deal with the immunity provision to make it parallel to HB 157.

Vote: The motion carried unanimously.

Motion: **REP. KOTTEL MOVED TO AMEND HB 214, ITEMS 1 THROUGH 3 OF EXHIBIT 2.**

Discussion: **REP. KOTTEL** explained the amendments.

REP. SHIELL ANDERSON asked why the new language was being struck on lines 4 through 6 on page 2.

REP. KOTTEL said it was designed to match HB 157 in saying that police officers are not allowed on their own discretion to release the information. The amendment would make this bill parallel to HB 157.

REP. MC GEE pointed out that page 5, line 15 included a reference to 45-5-505, MCA which caused the bills to conflict.

Motion/Vote: **REP. KOTTEL MADE A SUBSTITUTE MOTION TO MOVE AMENDMENTS 1 THROUGH 3 AND ON PAGE 5, LINE 15 TO INCLUDE 45-5-505, MCA. The motion carried unanimously.**

Motion/Vote: **REP. MC GEE MOVED HB 214 DO PASS AS AMENDED. The motion carried 17 - 1, REP. DIANA WYATT voted no.**

REP. BOHARSKI and **Mr. MacMaster** discussed the committee's intent in handling the two separate bills.

Motion: **REP. WYATT MOVED TO RECESS.**

The meeting was recessed at 8:00 AM.

CHAIRMAN BOB CLARK reconvened the meeting at 2:30 PM.

All members and staff were present except **REP. CLIFF TREXLER,** who was excused.

REP. LOREN SOFT described the results of the subcommittee meetings which were held on the human services bills which had come before this committee.

EXECUTIVE ACTION ON HB 60

Motion/Vote: **REP. SOFT MOVED TO TABLE HB 60. The motion carried unanimously 14 - 0. REP. CLIFF TREXLER voted by proxy. REPS. GRIMES, BOHARSKI, SMITH and AHNER were absent at the time of the vote.**

Information: **EXHIBIT 3** was submitted as further information for HB 60.

EXECUTIVE ACTION ON HB 41

Motion: **REP. MC GEE MOVED HB 41 DO PASS.**

Discussion: **REP. SOFT** talked the committee through the amendments. He also mentioned the members of the departments and advocacy groups who worked together on the amendments. He said it contained compromise language.

Motion: **REP. SOFT MOVED TO AMEND HB 41. EXHIBIT 4**

Discussion: **REP. TASH** said the language referring to involuntary administration of medication to a patient in a mental hospital was exactly the same as what he was asked to carry by the County Attorneys' Association. He asked if the amendment for subsection 2, on page 1 of the amendments was standard language.

{Tape: 1; Side: B; Comments: REP. CLIFF TREXLER voted by proxy on all bills during this meeting.}

Mr. MacMaster said these amendments amend existing code sections. He explained why the code sections were referenced through the amendments.

EXHIBIT 2
DATE 2/11/95
HB 214

AMENDMENTS TO HOUSE BILL 214 AS INTRODUCED

1. Page 1, line 16 through page 2, line 2.
   Strike: Section 1 in its entirety
   Renumber: subsequent sections

2. Page 5, line 15.
   Following: "45-5-503"
   Insert: "45-5-504(2)(c)"

3. Page 7, line 16.
   Following: "petition"
   Strike: "a district"
   Insert: "the"

4. Page 7, line 16.
   Following: "court"
   Insert: "that sentenced the offender for the last conviction or, if that court is not in this state, the district court for the judicial district in which the offender resides"

5. Page 7, line 28 through 29.
   Following: "part"
   Strike: "shall be imprisoned in the state prison for a term"
   Insert: "may be sentenced to a term of imprisonment"

6. Page 7, line 29.
   Following: "of not"
   Strike: "less than 2 years or"

7. Page 8, lines 1 through 14.
   Strike: section 12 in its entirety.
   Insert: "NEW SECTION. Section 12. Dissemination of information in register. Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that the name of a registered offender is public criminal justice information, as defined in 44-5-103.

8. Page 8, line 17.
   Strike: "chapter 23, part 5"

9. Page 8, lines 20 through 28.
   Strike: sections 14 through 15 in their entirety.

HOUSE STANDING COMMITTEE REPORT

February 11, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 214** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 10.
Strike: "AND OTHER LAW ENFORCEMENT AGENCIES"

2. Title, lines 11 and 12.
Strike: "PROVIDING" on line 11 through "INFORMATION;" on line 12
Insert: "AND"

3. Title, line 12
Strike: "44-5-301,"

4. Title, line 14.
Strike: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE"

5. Page 1, line 18 through line 6 of page 2.
Strike: section 1 of the bill in its entirety

Renumber: subsequent sections

6. Page 5, line 15.
Following: "45-5-503,"
Insert: "45-5-504(2)(c),"

7. Page 7, lines 28 and 29.
Strike: "shall" on line 28
Insert: "may"
Strike: "imprisoned in the state prison for a term" on lines 28

Committee Vote:
Yes 17, No 1.

361355SC.Hbk

and 29
Insert: "sentenced to a term of imprisonment"
Strike: "less than" on line 29
Strike: "2 years, or"

8. Page 8, lines 1 through 14.
Strike: lines 1 through 14 in their entirety
Insert: "**NEW SECTION. Section 11. Dissemination of information in register.** Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

(1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection."

9. Page 8, lines 16 and 18.
Strike: "12"
Insert: "11"

10. Page 8, lines 20 through 27.
Strike: sections 14 and 15 of the bill in their entirety

-END-

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL #1 DATE 2/11/95

7:00 AM

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0177	KOTTEL, DEB 2/06	3/01		ELIMINATE RT TO TRIAL DE NOVO IN CRIMINAL CASES APPEALED TO DISTRICT COURT 3/02 ADVERSE RPT ADOPT VOTE:		3/03
HB0179	FELAND, GARY 2/07	3/01		ALLOW TRIAL FOR ESCAPE IN ANY COUNTY IF ESCAPEE DOESN'T OBJECT 3/02 CONCUR VOTE:		3/03
HB0186	KASTEN, BETTY LOU 2/21	3/15	3/15	GENERALLY REVISE LAWS RELATED TO CHILD PROTECTIVE SERVICES 3/22 CONCUR AS AMENDED VOTE:		3/23
HB0208	COBB, JOHN 1/31	2/28		PUBLIC DISCLOSURE OF GAMBLING VIOLATION SANCTIONS THAT ARE IMPOSED 3/28 CONCUR VOTE:		3/01
HB0214	KOTTEL, DEB 2/20	3/08	3/13	GENERALLY REVISE LAWS RE: REGISTRATION OF SEXUAL & VIOLENT OFFENDERS 3/14 CONCUR AS AMENDED VOTE:		3/16
HB0217	JOHNSON, JOHN 2/20	3/09		REQUIRE THAT SCHOOL EMPLOYEES BE TOLD THEY'RE LEGALLY PROTECTED FROM ASSAULT TABLED ON 03/09 VOTE:		
HB0231	PAVLOVICH, BOB 2/21	3/06		INCREASE FEE FOR ENTRY OF CONFESSION OF JUDGEMENT 3/06 CONCUR VOTE:		3/07
HB0232	JORE, RICK 2/06	3/03		REVISE CONCEALED WEAPONS PERMIT LAW 3/08 CONCUR AS AMENDED VOTE:		3/09
HB0234	HIBBARD, CHASE	2/03		REQUIRE CERTAIN LOAN & CREDIT AGREEMENTS BE WRITTEN TO BE ENFORCEABLE VOTE:		
HB0234	HIBBARD, CHASE 2/07	3/03		REQUIRE CERTAIN LOAN & CREDIT AGREEMENTS BE WRITTEN TO BE ENFORCEABLE 3/06 ADVERSE RPT ADOPT VOTE:		3/09
HB0240	SOFT, LOREN 2/27	3/13		ESTABLISH JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION 3/14 CONCUR AS AMENDED VOTE:		3/16
HB0250	MCCULLOCH, LINDA 2/03	3/02		REVISE SANCTIONS FOR MINOR TRAFFIC OFFENSES 3/02 CONCUR VOTE:		3/03

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on March 8, 1995, at 9:00 AM

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 157, HB 214, HB 347, HB 253
Executive Action: HRJ 14, HB 232, HB 253, HB 347

HEARING ON HB 214 & HB 157

Opening Statement by Sponsor:

REPRESENTATIVE DEBORAH KOTTEL, House District 45, Great Falls, presented HB 214. This legislative session has had a lot of focus on the issue of crime. The three areas of focus are: victim protection, rehabilitation/prevention and deterrents/punishment. Deterrents and punishment is not just keeping people in prison. Deterrents deal with what to do with the individual once they are out of prison and on the street. How will the people of Montana be protected? HB 214 deals with

lifetime registration of violent offenders. Presently in Montana we have registration of sex offenders for 10 years. The lifetime registration would require an individual within 14 days of moving into a county or upon release from a correctional institution to report to their local sheriff and fill out a registration card. Since they have already been convicted of a violent crime, as set out in HB 214, their records, fingerprints, and other criminal identifying information would then be sent to the local sheriff. If the person fails to register, that would be a felony. Why is this important? Statistics show that 60% of violent offenders reoffend. The information from the attorney general's office is shocking. They are able to solve less than 10% of the arson cases, less than 40% of the robbery cases, etc. Lifetime registration lets the person who has already been convicted of a violent crime know and understand that law enforcement knows where they are and makes them accountable for their actions. What this bill does not do is label their door or allow general public dissemination of that information so that if people are truly interested in rehabilitation, they can be about their business of rehabilitation and become good citizens in the community. This bill allows any violent offender to come into a court proceeding after 10 years and petition the judge to come off the lifetime registration. If they have proven themselves and there has been no further violent crimes, they will be able to come off the lifetime registration. The states around us have registration of violent and sex offenders. Out-of-state offenders can escape the detection of law enforcement agencies. If people themselves do not have impulse control and cannot set their own boundaries to live in society, then we as a society must set those boundaries for them.

REPRESENTATIVE MATT DENNY, House District 63, Missoula, presented HB 157 which is an act to allow life sentencing and lifetime registration and supervision of sex offenders. This bill was drafted at the request of the Governor's Council on Corrections and Criminal Justice Policy. This Council was composed of people from around Montana who are involved in the criminal justice and corrections system including judges, sheriffs, police officers, probation officers and prison officials. It was drafted to address the growing public concern about the sex offender in our society while addressing the goal of rehabilitating offenders and finding solutions which will ensure a safer society for all Montanans. This bill has two principal provisions: one provides for lifetime sentencing and the other for lifetime registration for sex offenders. The life sentence is not subject to reduction and is a true lifetime commitment to the Department's control and supervision. Experts who deal with sex offenders believe that a sex offender, like an alcoholic, is never cured. Rather their disease, like alcoholism, is able to be controlled. This bill will address the need to protect society while providing for the rehabilitation of the offender through lifetime supervision and registration. The bill provides an alternative for district court sentencing a convicted sex offender. In addition to the current prison terms which are provided by the criminal statutes,

this bill permits the district court to sentence the sex offender to the custody of the Department of Corrections and Human Services for the remainder of his or her life. The offender will be placed in the correction system based upon the offense, previous record, behavior and progress in the treatment programs. For the vast majority of sex offenders, this means placement in Montana State Prison while the offender undergoes intensive sex offender treatment. Following completion of that program when it is determined the offender is ready, the offender may be placed in a community based prerelease center under continuing treatment. Following this, the offender may be placed under supervision of probation and parole while continuing to undergo treatment. If there is any reason to believe that the offender may reoffend or that he is not continuing to participate in his treatment, he can be removed from society and returned to MSP until his placement back in the community can be accomplished with safety to the public. This provides the offender with a strong incentive to remain in treatment and to continue to address his disease throughout the remainder of his life. In conjunction with lifetime supervision of offenders, this bill also increases the time during which any sex offender must register with local law enforcement authorities in the town in which the offender resides. This bill requires that sex offenders register for the remainder of their life rather than the 10 years which is currently provided in statute. It also provides a means by which a sex offender who is successfully rehabilitated himself, may ask the court to be relieved from the duty to register. The bill also provides that while the names of registered sex offenders may be public, other information about the offender is confidential criminal justice information. Personal information including the residence of the offender would not be generally available to the public, but is available to local and state law enforcement personnel. This protects the privacy of the offender and relieves the offender of stigma which may adversely impact his or her treatment. To ensure that known and dangerous sex offenders are not released from prison without public notification, the bill requires the Department to petition the district court for authorization to release whatever information is necessary for public protection prior to the actual release of the offender. This provision addresses those offenders who have received a prison term of so many years and who have failed to address their disease through treatment. The fiscal note states the costs at approximately $225,000.

Proponents' Testimony:

Rick Day, Director of the Department of Corrections and Human Services, spoke in favor of the HB 157. Tougher criminal penalties, improved investigative information and enhanced public safety describes HB 157. It is not just another bill in a long line of get tough legislation. It is intended to provide solutions to the public safety imposed by criminal sex offenders. HB 157 is designed around the acknowledgement that sex offenders are not cured but must be involved in treatment and supervision

for the rest of their lives. For some that fail to accept and participate in treatment designed to reduce the risk of reoffense, this legislation will mean life in prison. For others, it may mean a return to a productive life in a community under supervision and continued treatment but allows for a return to prison if the offender fails to comply. It also imposes the requirement of lifetime registration of sex offenders. This legislation was drafted to identify the registerer as criminal justice information. The names of the offenders would be public information. This also provides a method through the district court to disclose registration information to the public. Although there continues to be much discussion around the issue of public disclosure, recent court decisions in New Jersey tend to indicate the method offered in this legislation is the most acceptable approach. Evidently a similar law in New Jersey called Megans law, included a broader public disclosure administered by the attorney general. Recent court decisions have overturned that section primarily based on the denial of due process and acknowledgement that the courts need to be involved in a public disclosure process. HB 157 already incorporates the district courts in this process. The executive budget included expanded prison and community treatment funds and additional parole and probation officers to provide the supervision required to back this legislation. At this point, the portion of the funds for expanded treatment at Montana State Prison, have been approved but the community side has not and that is an amendment at a House Appropriations Hearing this morning. HB 157 represents a thoughtful and aggressive solution designed to combat the increase in sexual crimes.

John Connor, Attorney General's Office, Montana County Attorneys Association, Member of the Governor's Advisory Council on Corrections and Correction Policy, spoke in support of HB 157 and HB 214. One of the concerns about these bills in the hearing in the House was that they are overly onerous where the rights of the defendants are concerned. This bill contains protections for the defendant by giving the court an alternative situation. The court can sentence the defendant under existing statutes with respect to time or, under this bill, has the alternative if the situation warrants it to require a lifetime supervision. The intent of that provision is not to put the defendant in prison, although that is an option, but to maintain a supervision over that person for the rest of the offender's life so that there is some adequate system of monitoring. Statistics indicate that about 1/4 of all offenders who leave prison do so without supervision and approximately 1/3 of offenders who are in prison for sex offenses, are not unwilling to accept treatment. This provides a means of tracking and monitoring to enforce constraints which are necessary to keep these people from reoffending. Their are protections in the bill with respect to allowing the defendant to petition the court for this sentence to be set aside if, in fact, he can demonstrate to the court's satisfaction that he has, over a period of ten years, changed his conduct so that he doesn't present a threat to reoffend. The

House made some changes in HB 214 with respect to the dissemination of information which made it consistent with HB 157. They believe those changes were excellent decisions.

John Strandell, Undersheriff of Cascade County, Member of the Governor's Council on Corrections and Criminal Justice, Board Member of the Montana Sheriffs and Peace Officers Association, stated the sex offender's committee was responsible to consider more stringent and progressive responses to sex offenders throughout Montana. They were formed to consider lifetime supervision of sex offenders and they also discussed other issues such as DNA registration, lifetime registration of sex offenders, and public disclosure of the offender's identity to the public. During discussion and testimony provided to the committee, it became apparent that there is no cure to the problem that sex offenders have. Treatment can control their behavior if properly monitored. Lifetime sentencing and registration will be effective in controlling these offenders when they are released from prison. Statistics show that the greatest risk for reoffense is within the first six months. But the second time frame most common for reoffense happens 15 to 20 years later. From a law enforcement point of view, it is very disturbing to see sex offenders come back to the community from prison knowing that the high risk for reoffense is there. One of every four released have served their sentence issued by the court and are currently not on supervision of any type. Many offenders receive no treatment in prison because of noncompliance by the offender. Lifetime registration and sentencing control would keep the offender within the community and if conditions are violated, any offender can be reincarcerated. This legislation also provides for proper dissemination of information on sex offenders to the general public after a petition is filed with the district court and the court orders the information released. This legislation provides effective and progressive change in controlling sex offenders in our state.

Jane Christman appeared in support of HB 157 and 214. Almost eight years ago her son, Ryan Van Luchene, was murdered by Robert Hornbach, who is a repeat sex offender. In July of 1987 she moved to Libby. She was a newly single parent. She had the opportunity to work in either Spokane or Libby. She decided that Libby would be a safe place for her children. She found a home in Libby and so did Robert Hornbach, who was originally from that area. He had been released from Montana State Prison about ninety days earlier. He had served a three year term for raping a little boy about 100 yards from the house which she bought. He had a five year sentence, but was out in three years. No one told her he was there. Maybe the parents should know these things before tragedies happen. Ryan's first love was fishing. Their land had a stream through it. She registered Ryan for school on Friday. It would have been a wonderful place for someone to let her know that there was a dangerous man in the community. No one told her. Ryan was murdered on Monday, he never did start second grade. She called her family in Kalispell

when Ryan was missing. Someone working within the penal institution called her brother and said he knew who was out of prison and in Libby. He knew. They knew they were not looking for an alive little boy because Robert Hornbach stated in prison that if he ever did it again, he would leave no witnesses.

Derek Van Luchene spoke in support of HB 214 and HB 157 not only as a law enforcement officer, but as a victim of violent crime. On August 31, 1987, his family learned that his eight year old brother was murdered by Robert Hornbach. Mr. Hornbach was a once convicted child molester who had been set free to go anywhere he wanted without having to report to anyone about his whereabouts and that day his brother happened to run into Mr. Hornbach. He was in the wrong place at the wrong time and fell victim to this animal. Why didn't he have to report his whereabouts? Why wasn't he kept track of? Why wasn't the community warned? We need laws to keep track of these sex offenders, not just while they are on conditions of parole but for the rest of their lives. The community needs to know where they are. His family has worked very hard to deal with the loss of his brother. He is presently working as a police officer. He has taken the anger and hurt that he feels and turned it into something positive. He works very hard to make his community a safe place to live. He works in the schools and teaches the children how to stay safe and avoid strangers. All he has left of his brother are memories.

Sandy Heaton, Therapist from Montana State Prison, spoke in support of HB 157. She has worked with offenders for 16 years. Lifetime supervision with treatment and monitoring them in the community is the responsible way to deal with the offenders. Offenders need a chance to be productive members of the community and this bill is a good balance to do both. It will help to track and monitor them while keeping the community safer. It will also allow those who want to change their lives to do so.

Christine Kaufman, Director of Montana Human Rights Network, spoke in support of both bills by presenting her written testimony, **EXHIBIT 1.**

Sandra Hale, PRIDE, presented her written testimony, **EXHIBIT 2.**

Arlette Randash, Eagle Forum, presented her written testimony in support of HB 157, **EXHIBIT 3.**

Opponents' Testimony:

Scott Crichton, ACLU, presented his written testimony in opposition to HB 214 and HB 157, **EXHIBIT 4.** He has a lot of personal respect for the testimony this morning, for the anguish the victims have been through in their lives and he does not defend sex offenders. He spoke in support of preserving the constitutional protections for all of its citizens by advising

the committee about a couple of his concerns which may make this bill more constitutionally worthy. He read a newsclipping from the New York Times, January 10, ten days after Megans law went into effect. "Two men who knew that a recently paroled sex offender was living here because of the community notification provision in Megan's law, have been charged with assault in a case the prosecutors are calling the first instance of vigilantism under the new law. The two men, a father and son, broke into a house where the parolee, Michael Goof, 25, was asleep on the living floor at 2:45 in the morning, Sunday. Warren County authorities said several people were staying at the house and one of the intruders began beating a man he mistook for Mr. Goof. All of a sudden a big guy, says Mrs. Keller, one of the people asleep at the house, in a black ski mask came in the door and said he was looking for the child molester. Someone called the police who arrived with minutes and subdued the attacker before anyone was seriously hurt." What happened is they attacked an innocent person based on information that had been released on the supposed whereabouts of this individual. If there was some guarantee that there would be ample opportunity to make sure that people who are being tracked are also being treated, this would be more palatable. He thanked **SENATOR VAN VALKENBURG** for introducing a bill which he introduced which allowed the people in treatment at MSP not to be held accountable for crimes they admitted to in their treatment. In Billings a sex offender would not have been convicted if that immunity had been in place. There is a problem either way this is looked at. By allowing a person to be prosecuted for what is said in therapy, a lot of inmates will refuse treatment entirely. That is self defeating. Sex offenders are likely to never be rehabilitated if in the process of their therapy, they are likely to be recharged and resentenced on additional crimes.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR HOLDEN asked **REPRESENTATIVE DENNY** why the House left the homosexuality reference in the bill. **REPRESENTATIVE DENNY** commented the amendment to the bill was submitted to the committee and he concurred with that amendment, however, the opinion of the committee was that because that particular statute included offenses of two different natures, bestiality and homosexual conduct, they did not want to strike that from the law.

SENATOR HOLDEN asked how the public would find out where a offender lives.

REPRESENTATIVE DENNY commented in Section 7 (1) it states that the offender must register for the remainder of their life. After ten years, if they have not reoffended, they may petition the district court to be released from the requirement to register.

SENATOR HOLDEN asked how the public, in a practical sense, would find out that a sexual offender is in the community.

REPRESENTATIVE DENNY commented there are two different ways to find out. Under the normal registration, that person's name would be included in a registry available to the public. This would not give details of the crime or where the person lives. Perhaps a law enforcement officer would inform someone who is interacting with this person, that his name is on the list. The Department can petition a district court to release all of the information to the public. That information would be available at the county courthouse or through law enforcement.

Mr. Ohler commented on the physical location of the sexual offender register. The register is currently maintained by the Department of Corrections in Helena. Local law enforcement would be advised through the registration process that an individual has entered their community and he is a registered sex offender. They would have the information but not the register.

SENATOR HOLDEN asked how he personally would find out who is on the register.

Mr. Ohler commented that HB 157 states that the name of a registered sexual offender is public criminal justice information. That means that information is available to the public and can be disseminated to the public. If you wanted to know whether John Doe was a registered sexual offender, you could contact the Department of Corrections.

SENATOR HALLIGAN stated that if the Department believed the release of information is necessary for public protection, the Department shall petition the district court. The Department may not believe that the public needs the protection, but the deputy county attorney, working with the victims, may believe that the public would be served by a district court petition disseminating the information. There is no opportunity for the county attorney to petition the district court in order to have the information. Was this discussed in the House hearing?

Mr. Ohler stated it is not addressed in the bill. By stating that the register is confidential criminal justice information except for the name, the provisions of the Criminal Justice Information Act apply to this information. There are provisions for a county attorney to ask the district court to release of confidential criminal justice information upon a showing of public need or safety. Section 9 (2) addresses the situation where an individual is sentenced to a term of imprisonment at Montana State Prison and refuses to enter into treatment and the prison believes there is a risk to the community to have an untreated sex offender released because of the great possibility that he will reoffend. The prison then would have an opportunity to go to district court and seek some release of information so that the public can be notified.

SENATOR ESTRADA asked if the family of the victim would be notified that the offender has been released and is going back to the community?

Mr. Ohler stated that was not provided for in this bill. The crime victim's bill would deal with notification. The sexual register is available to local law enforcement personnel. Criminal justice agencies have access to that information. When a sex offender enters a community he is required to report to the local law enforcement and register with them. That information is then transmitted to the Department of Corrections where the register is maintained. HB 157 is changing the current law from 10 years registration to lifetime registration of sex offenders.

SENATOR JABS stated the families will not know if a sex offender lives in their neighborhood.

Mr. Ohler stated that is a two edge sword. There is a possibility of going too far with releasing information concerning sex offenders. There is a fine line as to how much information can be disseminated to the general public without some sort of court proceeding. He spoke with the attorney general from the State of New Jersey and discussed the court opinions that have been handed down both in federal and New Jersey Superior Court concerning New Jersey's community notification law which has been struck down as being unconstitutional. The problem with the New Jersey statute was that their law permitted the attorney general to draft some guidelines as to what kind of information could be released to the community and based upon those guidelines a local law enforcement person could go to the newspaper and say there is a sex offender living in the community and give the address. The federal and New Jersey State Courts found that to be a problem because there was no due process. It was found to be punitive and said there would have to be a court proceeding before information was released because it is very damaging to the sex offenders who do have some rights of privacy. HB 157 limits the release of the information to the name of the offender. An example would be, local law enforcement knows John Doe is a sex offender and he is hanging out where young people congregate. The local law enforcement can go to the mother and warn her that a registered sex offender is communicating with her child. He cannot give an address or place of work. This would require some court proceeding.

SENATOR BAER stated that victims and their family should not meet a sex offender face to face, not knowing that he has been released from prison and is back in town.

REPRESENTATIVE DENNY commented that HB 69, which has passed both chambers, requires notification of the victims of any change in status of a particular perpetrator. This bill includes that at such time that the offender petitions a district court to be

released from their obligation to register, the victim will be informed within three days by the county attorney.

REPRESENTATIVE KOTTEL commented that in other jurisdictions, if a convicted sex offender who has served his time, is hanging around a school yard, law enforcement can run a check to determine if this is a sex or violent offender. Registration allows the police, if the person has not registered, to remove the person out of the dangerous situation and hold them pending an investigation because they then could charge him with the crime of failure to register. This is a tool which local law enforcement can use to help prevent the crimes from taking place.

SENATOR NELSON asked about the retroactive applicability which was removed from the bill.

REPRESENTATIVE KOTTEL stated that a Supreme Court provision struck down a statute which had an ex post facto provision on it because when the people were previously convicted, lifetime registration was not part of their sentence. She did not like removing this from her bill, but understands the constitutionality of the situation.

SENATOR BARTLETT asked about the status of the funding request for the fiscal note.

REPRESENTATIVE KOTTEL stated that it is her understanding that the funds are available. It is only $21,000 in the first year and after that a $1,000 for all succeeding years.

SENATOR BARTLETT stated HB 157 includes as one of the sexual offenses the crime of incest but qualifies that by specifying that that does not include unless the act occurred between two consenting persons 16 years of age or older. The statute on incest says that consent may be raised as a defense with or upon a stepson or stepdaughter, but is ineffective if the victim is less than 18 years old. The incest statute says "18", this bill says "16".

Mr. Ohler stated that Section 6 was discussed by the Governor's Council as to whether or not to eliminate that parentheses from that particular section and the decision was to leave it in.

SENATOR BARTLETT asked if they consciously chose the 16 years of age as a part of that parentheses.

Mr. Ohler commented the discussion was to leave the current statute and the current definition the way it is.

SENATOR BARTLETT stated the issue was raised that if a person under the lifetime registration requirement petitions a court that the court petition process would be a public process. Is it possible to close that hearing to the public?

Mr. Ohler stated he did not recall any discussions as to privatizing the particular hearings. There was discussion as to the appropriate venue for bringing a petition and the Council believed that the proper venue to bring a petition would be in the county in which the offense occurred, presumably that being the same county that the victim and the victim's family would reside in.

SENATOR BARTLETT stated that the Department was concerned about being able to release information in the case of a person from a state prison who had refused treatment. That section specifically states that the Department can seek permission to release the information before the person is released from a state prison. She asked what the word "state prison" covered?

Mr. Ohler stated that prerelease centers, the regional prisons, and Montana State Prison are all administratively considered state prisons or extensions of the state prison and people who reside in any of those facilities are considered inmates so that should not be a problem.

SENATOR BARTLETT asked **REPRESENTATIVE DENNY**, referring to the testimony regarding deviant sexual conduct and the definition of that term includes "bestiality", if the act of incest occurred between two consenting persons 16 years of age or older, would that kind of parenthetic statement after 45-5-505, expressly excluding consenting acts by adults.

REPRESENTATIVE DENNY commented his only concern might be that they would lose the entire bill when it went back to the House.

Closing by Sponsor:

REPRESENTATIVE KOTTEL stated she put HB 157 and HB 214 together because in her mind sex offenses have very little to do with sex and everything to do with violence. Eight months ago a baby was admitted to Montana Deaconess Hospital. The baby was six months old. The baby had her esophagus torn open and had oral gonorrhea from what a man did to that child. Ryan was not just brutally sodomized. He was killed and left for dead in a cemetery in Libby. Why do people commit violent crimes against other human beings? She believes it is because they have a lack of respect for the victim as well as society's laws. They certainly have the inability to control their impulses and often they have a chemical dependency problem. Those four elements are true for sex offenses, deliberate homicide, and aggravated assault. What will HB 214 do? It will create a registry to assist law enforcement in investigations. It establishes legal grounds to hold offenders in suspicious circumstances. It deters violent and sex offenders from committing new offenses. It offers citizens the availability of important information so that they can protect themselves.

REPRESENTATIVE DENNY stated that if HB 157 is passed, we should not fool ourselves for a minute that people will not still offend and that victims will not be preyed upon. Hopefully, we will be able to protect more people from repeat offenders and make our system more effective at rehabilitating and controlling offenders. During the House hearing they heard testimony that a number of currently convicted sex offenders at the State Prison are in favor of this legislation because they need to have boundaries. Those who want to be rehabilitated would like to know that society is watching them and they will be held accountable for their actions in the future.

HEARING ON HB 253

Opening Statement by Sponsor:

REPRESENTATIVE BEVERLY BARNHART, House District 29, Bozeman, presented HB 253 which would allow judges in a dissolution action, to send parents to a class which will teach them the affects of divorce on children. Children will be affected differently at different ages. Some judges are already doing this. There is plenty of material available. The judge would tell all people who come before him for a divorce, that this class is available and he may send some of them if he believes they need this class. At the end of the class the two parents enter into a contract and decide things such as what should be done for birthdays, Christmas, etc., so their child's life is more stabilized. She passed out two handouts, **EXHIBITS 5 and 6.**

Proponents' Testimony:

Pat Melby, State Bar of Montana, stated their support of HB 253. A small part of his practice is family law. Anyone who is involved in that area runs into situations where the parties to a divorce, in a very emotional state, tend to use the children as a way to punish the other party. A judge should be able to order these parties to take some classes and educate themselves on what those kinds of activities can do to children.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE BARNHART offered no further comments on closing.

EXECUTIVE ACTION ON HB 253

Motion/Vote: **SENATOR HALLIGAN MOVED HB 253 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on oral vote.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3/8/95
BILL NO. HB 214

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

MARCH 8
~~February 3~~, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton. I am the Executive Director of the American Civil Liberties Union of Montana. I am here today to voice opposition to HB 214.

Most of the comments I made on HB 157 would apply to HB 214.

I'd like to acknoweledge that some key elements about which the ACLU expressed concerns in the House have been addressed.

Our concerns with what was originally the new Section 12 (which provided for release of the information if the release is "necessary for public protection" is improved with some judicial safeguards previously absent.

There was a real ex post facto problem in Section 15 which would make this registration apply retroactively to all persons who have ever been convicted.

Still, this is clearly a punitive bill. The lifetime registration, I think, is violative of our Constitution's restoration rights. Furthermore, even though the convicted person would be eligible after ten years to petition the court for relief from that obligation, I believe this is a draconian measure. Such a petition would be public and would undoubtedly cause press coverage and public furor. It would make the individual subject to a witch hunt. It would violate the rights to privacy and human dignity. Furthermore, it is unlikely to have any effect on the crime rate. This kind of knee jerk response to what is obviously a problem does more harm than good.

These bills simply contradict our basic sentencing policy of the State of Montana. Section 46-18-101(2), Montana Code Annotated sets forth the basic policy of the state of Montana. It reads:

> The correctional policy of the State of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions. Corrections laws and programs must be implemented to impress upon each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses

> occurs whenever probable cause exists and that punishment of the convicted is certain, timely and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

Neither HB 157 or HB 214 is at all consistent with the ideas of rehabilitation and consideration of individual characteristics, circumstances, needs and potentialities. Rather, each contains a blanket assumption that every person who is convicted of a sex crime and/or a violent crime, will be and remains a sexual pervert or violent threat for life. That simply is not true.

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-8/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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DATE 3/8/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 253 HB 157 HB 214 HB 347

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
W James Kembel	City of Billings	HB 347	✓	
Jane Christman	HB 214, HB 157	→	✓	
Derek VanLuchene		214, 157	✓	
John Connor	Attorney General's Office	HB 347 157-214	✓	
Pat Melby	State Bar of MT	HB 253	✓	
Blake Wordal	Lewis & Clark Co.	HB 347	✓	
Judge Martha Gilbert	Yamhill County	HB 347	✓	
Brad Martin	MT Democratic Party	HB 347	✓	
Dave Oitlen	Dept Corrections	HB 157	✓	
Sandy Heater	"	HB 157	✓	
John Steandelle	Cascade County	H.B 214 HB 157	✓	
Lee Hansen Reid	Flathead Co/MACR	HB 347	✓	
Christine Kaufmann	MT. Human Rights Network	HB 157 HB 347	Amend ✓	
Edmund Caplis	MSCA	HB 347	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN RIC HOLDEN**, on March 14, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 84, HB 256, HB 345, HB 356, HB 357
Executive Action:	HB 84, HB 356, HB 357, HB 240, HB 429, HB 214. HB 74 - discussion only.

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 256

Opening Statement by Sponsor:

REPRESENTATIVE ROGER SOMERVILLE, Kalispell, House District 78, presented what he characterized as a good common-sense, get-tough-on-drunk-drivers bill. This bill would add a felony

section the words, "except as provided in Section 5," should be added. **Valencia Lane** explained that they would have to say, "except as provided in 41-5-604." She said it was a good idea and had nothing to do with the conflicts. On Page 1, Line 20, after, "all filed matters," insert, "except as provided in 41-5-604."

Motion/Vote: **SENATOR HALLIGAN MOVED THE AMENDMENT AS STATED ABOVE.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 429 BE CONCURRED AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 214

Discussion: **CHAIRMAN CRIPPEN** said there was a question brought up by some people that the striking of Section 45-5-505 on Page 5, Line 19, would strike that section in its entirety from the code. He did not think so, since there was nothing in the title repealing it. **Valencia Lane** said the question had been raised on Page 5, Line 19, if 45-5-505 was struck, if somehow it would repeal the crime of deviate sexual conduct. She said there was no way that striking that reference in that section of law repealed the crime of deviate sexual conduct. 45-5-505 is still on the books, it creates the crime of deviate sexual conduct. There is a definition in the Title of 45 that defines maybe 17 pages of amendments. Deviate sexual conduct is defined in there. On Page 5, Line 19, 45-5-505 is the crime of deviate conduct. If the reference is stricken to that section on Line 19, it would say that a person convicted of the crime of deviate sexual conduct does not have to register under Title 45, Chapter 23, Part 5, which is the registration of sexual offenders. Line 18, says, "sexual offense means these following offenses:" Line 16 says sexual or violent offender means a person convicted of a sexual or violent offense. Sexual offenses are listed. She said if sexual conduct is removed from the definition, it would say those people who might be convicted of deviate sexual conduct won't have to register as a sexual offender under these sections of law. But it would not repeal the crime of deviate sexual conduct. **CHAIRMAN CRIPPEN** said **Arlette Randash** was concerned that it was stricken from the bill. He didn't know if the concern was that it was stricken from the registration. He said he did not think anyone had ever been convicted under this section, for bestiality or the other items covered. **SENATOR BAER** said he had spoke with **REPRESENTATIVES DENNY AND BOHARSKI** who related that there was an attempt in the House on HB 157 to also strike 45-5-505, and there were hostile murmurings that if it were stricken, it would not pass. Having an inconsistency in two like bills, whereby one retains 45-5-505 and the other strikes the code section, was maybe an oversight by the sponsor or the House committee. He proposed, unless there was any significant impact of why 45-5-505 was stricken, that they amend the bill by re-inserting it.

Motion: **SENATOR BAER MOVED THAT HB 214 BE AMENDED ON PAGE 5, LINE 19, FOLLOWING: "45-5-505," INSERT: "45-5-505."**

Valencia Lane said that HB 157 relates only to sexual offenders and it also amends Section 46-6-2502. It does not strike the reference to 45-5-505. If both bills pass with the reference stricken in one bill and not the other bill, the bill that strikes it will override and it will be stricken in that section of the code. **SENATOR JABS** asked if it would be stricken from the other bill as well if they left it in? **Valencia Lane** replied, no. She explained that when two bills amend one section, at the end of the session, they do a process called, "codification," and all the bills passed have to be inserted in existing codes. If two bills amend the same section, they have to codify all the changes in both bills. If the language does not fit together, they do a "coordination instruction". She said these two bills do not conflict, and can both be codified, but where one strikes 45-5-505, to honor the amendments contained in both bills, they would strike that from the code so when they are codified, 45-5-505 will not appear in this section anymore. **CHAIRMAN CRIPPEN** said it would also not appear in HB 157. **SENATOR BAER** said he did not know why 45-5-505 was stricken, but it was an excellent bill and should pass. If the House members were correct in their knowledge that 45-5-505 was stricken, which they may not have picked up before, and making the statement that if it had been stricken as attempted in the other bill, it would not have passed, perhaps this committee was condemning the bill to death if they left it stricken. He did not want that to happen.

{Tape: 3; Side: A; Approx. Counter: 00}

SENATOR HOLDEN . . .(tape change) . .a definition of sexual offense. What they are saying is that bestiality or homosexuality or anything else that fits under that segment, 45-5-505, is not going to be considered a violent offender. He said there was no doubt in his mind that he was going to vote to re-insert that clause back into the bill. **SENATOR BARTLETT** said she believed that it was stricken at the sponsor's request, as part of the amendments made in the House. **SENATOR BISHOP** said he agreed. He said no one could object to it and it could not hurt anything. No one would have to register because there were no convictions under that section. It would not accomplish anything one way or the other. He thought he would like to see it kept in. **SENATOR BAER** said he was concerned that this was stricken from his bill. He was told if it were stricken, it would not pass the House. **CHAIRMAN CRIPPEN** hoped he realized the importance of it. If it were not stricken from this, it limits and affects his bill as well. **SENATOR BAER** had moved that P. 5, Line 19, following, "stricken 45-5-5-5," insert, "45-5-505."

Vote: The **MOTION CARRIED** on an oral vote, with **SENATORS BAER, ESTRADA, HOLDEN, JABS, BISHOP, LORENTS GROSFIELD and ESTRADA**

(proxy) voting yes, and **SENATORS HALLIGAN, BARTLETT, DOHERTY, NELSON AND CRIPPEN** voting no.

Discussion: **CHAIRMAN CRIPPEN,** in voting no, said he had fought against the exclusion of that provision from the law as hard as anyone over the years, but he had a problem applying it here. He did not want **REPRESENTATIVE DENNY'S** bill to be jeopardized.

Motion: **SENATOR HOLDEN MOVED THAT HB 214 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR BARTLETT** asked **Valencia Lane** about 45-5-507, "unless the act occurred between two consenting persons 16 or older." She thought that was the incest statute and she was concerned there were some varying in ages. **Valencia Lane** had asked **John Connor,** because she could see no reason to have it one way in one bill, and one way in the other. He said there was a lack of coordination in some bills in two different sessions. He said there was a discrepancy, but he saw no problem. **Valencia Lane** said for the purposes of this bill, they would not have to get into clarifying discrepancies in incest laws. **SENATOR BARTLETT** said it was conceivable that some people who could be convicted of incest but not be covered by HB in terms of a lifetime registration. **Ms. Lane** said HB 157 and this bill read the same because neither addresses the discrepancy. If they change this bill, they would have the affect of changing the other bill in the codifying. The problem is that in 45-5-505, there is an escape clause which says 18 years or older. **Ms. Lane** stated that it listed 16 years of age in the incest statutes and there would be a different penalty in that section. It said, "consent is ineffective if the victim is less than 18 years old."

Vote: The **MOTION CARRIED** on an oral vote with **SENATOR BARTLETT** voting no.

Discussion: It was determined that **SENATOR CHRISTIAENS** would carry the bill in the Senate.

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/14/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

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SENATE STANDING COMMITTEE REPORT

March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 214 (third reading copy -- blue), respectfully report that HB 214 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 5, line 19.
Following: "~~45-5-505,~~"
Insert: "45-5-505,"

-END-

07
Amd. Coord.
Sec. of Senate

Sen. Christiaens
Senator Carrying Bill

601201SC.SRF

HOUSE BILL NO. 214

INTRODUCED BY KOTTEL, CHRISTIAENS, TUSS, HURDLE, CLARK, HEAVY RUNNER, SIMPKINS, SQUIRES, GRIMES, PECK, RANEY, AHNER, TREXLER, HERRON, PAVLOVICH, QUILICI, BOHLINGER, ANDERSON, COBB, CAREY, TROPILA, COCCHIARELLA, SCHWINDEN, MENAHAN, MCCULLOCH, LYNCH, REHBEIN, REAM, GRINDE, T. NELSON, HARPER, HARRINGTON, J. JOHNSON, HAGENER, SIMON, SOFT, WELDON, SHEA

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE PUBLIC ~~AND OTHER LAW ENFORCEMENT AGENCIES~~ OF REGISTRATION INFORMATION NECESSARY FOR PUBLIC PROTECTION; ~~PROVIDING IMMUNITY FOR LAW ENFORCEMENT AGENCIES FOR THE RELEASE OR FAILURE TO RELEASE REGISTRATION INFORMATION;~~ AND AMENDING SECTIONS ~~44-5-301,~~ 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, AND 46-23-507, MCA~~; AND PROVIDING A RETROACTIVE APPLICABILITY DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 44-5-301, MCA, is amended to read:~~

~~**"44-5-301. Dissemination of public criminal justice information.** (1) There are no restrictions on the dissemination of public criminal justice information, except for the following:~~

~~(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.~~

~~(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions, except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to~~

~~subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.~~

~~(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall~~ must ~~be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.~~

~~(3) In addition to any other information authorized to be released under this section, a law enforcement agency is authorized to release relevant information that is necessary to protect the public, as provided under [section 12].~~"

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections and human services for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 2. Section 46-18-254, MCA, is amended to read:

"**46-18-254. Release of sexual or violent offender -- duties of court and department.** A sexual or violent offender must be informed in writing at the time of sentencing of the duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced. The department of corrections and human services shall obtain the address ~~where~~ at which the person expects to reside upon release or discharge or suspension of the person's sentence. The department of corrections and human services shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 3. Section 46-18-255, MCA, is amended to read:

"**46-18-255. Sentence upon conviction -- restriction on employment.** A judge sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant."

Section 4. Section 46-23-501, MCA, is amended to read:

"**46-23-501. Short title.** Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual or Violent Offender Registration Act"."

Section 5. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(C), ~~45-5-505,~~ 45-5-505, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

(4) "Violent offense" means:

(a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (4)(a)."

Section 6. Section 46-23-503, MCA, is amended to read:

"**46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**

in charge. A sexual or violent offender who is released from the custody of the department of corrections and human services or the department of family services must be informed in writing prior to release of ~~his~~ the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall obtain the address ~~where~~ at which the person expects to reside upon ~~his~~ the person's release and report the address to the department of corrections and human services. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 7. Section 46-23-504, MCA, is amended to read:

"**46-23-504. ~~Duty~~ Persons required to register -- procedure.** (1) A sexual or violent offender shall, within 14 days of ~~coming into~~ conviction or release from prison or within 14 days of entering a county ~~in which he resides or is temporarily domiciled~~ of this state for the purpose of residing or setting up a temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part, with the chief of police of the municipality or the sheriff of the county if ~~he~~ the offender resides in an area other than a municipality.

(2) At the time of registering, the person shall sign a statement in writing giving the information required by the department. The chief of police or sheriff shall fingerprint the person, unless the person's fingerprints are on file with the department of justice, and shall photograph the person. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department and the department of justice and to the sheriff of the county where the person resides, if registration is with the chief of police.

(3) The person registered under this section is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration.

(4) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 14 days after entry of the judgment."

Section 8. Section 46-23-505, MCA, is amended to read:

"**46-23-505. ~~Change~~ Notice of change of address -- duty to inform -- forwarding of information.** If a person required to register under 46-18-254, 46-18-255, and this part changes ~~his~~ residence, ~~he~~ the person shall within 10 days give written notification of ~~his~~ the person's new address to the law

enforcement agency with whom ~~he~~ the person last registered. The law enforcement agency shall, within 3 days after receipt of ~~such~~ the information, forward it to the department, the department of justice, and the local law enforcement agency having jurisdiction over the new place of residence and shall forward a copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency having jurisdiction over the new place of residence."

Section 9. Section 46-23-506, MCA, is amended to read:

"**46-23-506. Duration of registration.** (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the person's life, except as provided in subsection (2) of this section or during a period of ~~10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison~~ time during which the person is in prison.

~~(2) A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part.~~

(2) At any time after 10 years since the date of the offender's last conviction for a sexual or violent offense, the offender may petition a district court for an order relieving the offender of the duty to register under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society."

Section 10. Section 46-23-507, MCA, is amended to read:

"46-23-507. **Penalty.** A sexual or violent offender who knowingly fails to register under 46-18-254, 46-18-255, and this part ~~may~~ ~~shall~~ MAY be ~~sentenced to a term of imprisonment~~ ~~imprisoned in the state prison for a term~~ SENTENCED TO A TERM OF IMPRISONMENT of not ~~less than 90 days or a fine not to exceed $250, or both~~ ~~2 years or~~ more than 5 years or may be fined not more than $10,000, or both."

~~NEW SECTION. **Section 12. Sexual or violent offenders -- release of information to public -- when authorized -- immunity.** (1) A law enforcement agency is authorized to release relevant and necessary information regarding sexual or violent offenders registered under 46-18-254, 46-18-255, and this part to the public when the release of information is necessary for public protection.~~

~~(2) A governmental entity and its employees, as defined in 2-9-101, are immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the governmental entity or its employees acted with gross negligence or in bad faith. The authorization and immunity in this section apply to information regarding a person required to register under 46-18-254, 46-18-255, and this part. The immunity provided under this section applies to the release of relevant information to other governmental entities and employees and to the general public.~~

~~(3) Except as otherwise provided by law, this section may not impose liability upon a governmental entity or its employees for failing to release information as provided in subsection (2).~~

~~(4) Information authorized to be released under this section is public criminal justice information as defined in 44-5-103.~~

NEW SECTION. **SECTION 11. DISSEMINATION OF INFORMATION IN REGISTER.** INFORMATION IN THE REGISTER MAINTAINED UNDER 46-18-254 AND THIS PART IS CONFIDENTIAL CRIMINAL JUSTICE INFORMATION, AS DEFINED IN 44-5-103, EXCEPT THAT:

(1) THE NAME OF A REGISTERED SEXUAL OFFENDER IS PUBLIC CRIMINAL JUSTICE INFORMATION, AS DEFINED IN 44-5-103; AND

(2) BEFORE RELEASING FROM A STATE PRISON AN INMATE WHO IS A SEXUAL OFFENDER, IF THE DEPARTMENT BELIEVES THAT RELEASE OF INFORMATION CONCERNING THE INMATE IS NECESSARY FOR PUBLIC PROTECTION, THE DEPARTMENT SHALL PETITION THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE PRISON IS LOCATED OR FOR THE JUDICIAL DISTRICT IN WHICH THE INMATE INTENDS TO RESIDE FOR AN ORDER ALLOWING THE DEPARTMENT TO RELEASE

RELEVANT AND NECESSARY REGISTER INFORMATION REGARDING THE INMATE TO THE PUBLIC. THE COURT SHALL GRANT THE ORDER IF THE COURT FINDS THAT THE INFORMATION IS NECESSARY FOR PUBLIC PROTECTION.

NEW SECTION. **Section 12. Codification instruction.** [Section ~~12~~ 11] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [section ~~12~~ 11].

~~NEW SECTION. **Section 14. Two-thirds vote required.** Because [section 12] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.~~

~~NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to persons convicted of a sexual or violent offense before [the effective date of this act], as well as to persons convicted of a sexual or violent offense after [the effective date of this act], regardless of the date of the crime.~~

-END-

HOUSE BILL NO. 214

INTRODUCED BY KOTTEL, CHRISTIAENS, TUSS, HURDLE, CLARK, HEAVY RUNNER, SIMPKINS, SQUIRES, GRIMES, PECK, RANEY, AHNER, TREXLER, HERRON, PAVLOVICH, QUILICI, BOHLINGER, ANDERSON, COBB, CAREY, TROPILA, COCCHIARELLA, SCHWINDEN, MENAHAN, MCCULLOCH, LYNCH, REHBEIN, REAM, GRINDE, T. NELSON, HARPER, HARRINGTON, J. JOHNSON, HAGENER, SIMON, SOFT, WELDON, SHEA

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE PUBLIC ~~AND OTHER LAW ENFORCEMENT AGENCIES~~ OF REGISTRATION INFORMATION NECESSARY FOR PUBLIC PROTECTION; ~~PROVIDING IMMUNITY FOR LAW ENFORCEMENT AGENCIES FOR THE RELEASE OR FAILURE TO RELEASE REGISTRATION INFORMATION;~~ AND AMENDING SECTIONS ~~44-5-301,~~ 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, AND 46-23-507, MCA~~; AND PROVIDING A RETROACTIVE APPLICABILITY DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1. Section 44-5-301, MCA, is amended to read:**~~

~~**"44-5-301. Dissemination of public criminal justice information.** (1) There are no restrictions on the dissemination of public criminal justice information, except for the following:~~

~~(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.~~

~~(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions, except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to~~

~~subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.~~

~~(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall must be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.~~

~~(3) In addition to any other information authorized to be released under this section, a law enforcement agency is authorized to release relevant information that is necessary to protect the public, as provided under [section 12].~~"

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections and human services for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 2. Section 46-18-254, MCA, is amended to read:

"**46-18-254. Release of sexual or violent offender -- duties of court and department.** A sexual or violent offender must be informed in writing at the time of sentencing of the duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced. The department of corrections and human services shall obtain the address ~~where~~ at which the person expects to reside upon release or discharge or suspension of the person's sentence. The department of corrections and human services shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 3. Section 46-18-255, MCA, is amended to read:

"**46-18-255. Sentence upon conviction -- restriction on employment.** A judge sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant."

Section 4. Section 46-23-501, MCA, is amended to read:

"**46-23-501. Short title.** Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual or Violent Offender Registration Act"."

Section 5. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(C), ~~45-5-505,~~ 45-5-505 (AS THAT SECTION PERTAINS TO DEVIATE SEXUAL CONDUCT WITH AN ANIMAL AS DESCRIBED IN 45-2-101), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

(4) "Violent offense" means:

(a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (4)(a)."

Section 6. Section 46-23-503, MCA, is amended to read:

"**46-23-503. Release of sexual or violent offender from place of confinement -- duties of official in charge.** A sexual or violent offender who is released from the custody of the department of corrections and human services or the department of family services must be informed in writing prior to release of ~~his~~ the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall obtain the address ~~where~~ at which the person expects to reside upon ~~his~~ the person's release and report the address to the department of corrections and human services. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 7. Section 46-23-504, MCA, is amended to read:

"**46-23-504. ~~Duty~~ Persons required to register -- procedure.** (1) A sexual or violent offender shall, within 14 days of ~~coming into~~ conviction or release from prison or within 14 days of entering a county ~~in which he resides or is temporarily domiciled~~ of this state for the purpose of residing or setting up a temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part, with the chief of police of the municipality or the sheriff of the county if ~~he~~ the offender resides in an area other than a municipality.

(2) At the time of registering, the person shall sign a statement in writing giving the information required by the department. The chief of police or sheriff shall fingerprint the person, unless the person's fingerprints are on file with the department of justice, and shall photograph the person. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department and the department of justice and to the sheriff of the county where the person resides, if registration is with the chief of police.

(3) The person registered under this section is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration.

(4) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 14 days after entry of the judgment."

Section 8. Section 46-23-505, MCA, is amended to read:

"**46-23-505. ~~Change~~ Notice of change of address -- duty to inform -- forwarding of information.**

If a person required to register under 46-18-254, 46-18-255, and this part changes ~~his~~ residence, ~~he~~ the person shall within 10 days give written notification of ~~his~~ the person's new address to the law enforcement agency with whom ~~he~~ the person last registered. The law enforcement agency shall, within 3 days after receipt of ~~such~~ the information, forward it to the department, the department of justice, and the local law enforcement agency having jurisdiction over the new place of residence and shall forward a copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency having jurisdiction over the new place of residence."

Section 9. Section 46-23-506, MCA, is amended to read:

"**46-23-506. Duration of registration.** (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the person's life, except as provided in subsection (2) of this section or during a period of ~~10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison~~ time during which the person is in prison.

~~(2) A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part.~~

(2) At any time after 10 years since the date of the offender's last conviction for a sexual or violent offense, the offender may petition a district court for an order relieving the offender of the duty to register under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society."

Section 10. Section 46-23-507, MCA, is amended to read:

"**46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register under 46-18-254, 46-18-255, and this part ~~may~~ ~~shall~~ MAY be ~~sentenced to a term of imprisonment~~ ~~imprisoned in the state prison for a term~~ SENTENCED TO A TERM OF IMPRISONMENT of not ~~less than~~ ~~90 days or a fine not to exceed $250, or both~~ ~~2 years or~~ more than 5 years or may be fined not more than $10,000, or both."

~~NEW SECTION. **Section 12. Sexual or violent offenders -- release of information to public -- when authorized -- immunity.** (1) A law enforcement agency is authorized to release relevant and necessary information regarding sexual or violent offenders registered under 46-18-254, 46-18-255, and this part to the public when the release of information is necessary for public protection.~~

~~(2) A governmental entity and its employees, as defined in 2-9-101, are immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the governmental entity or its employees acted with gross negligence or in bad faith. The authorization and immunity in this section apply to information regarding a person required to register under 46-18-254, 46-18-255, and this part. The immunity provided under this section applies to the release of relevant information to other governmental entities and employees and to the general public.~~

~~(3) Except as otherwise provided by law, this section may not impose liability upon a governmental entity or its employees for failing to release information as provided in subsection (2).~~

~~(4) Information authorized to be released under this section is public criminal justice information as defined in 44-5-103.~~

NEW SECTION. **SECTION 11. DISSEMINATION OF INFORMATION IN REGISTER.** INFORMATION IN THE REGISTER MAINTAINED UNDER 46-18-254 AND THIS PART IS CONFIDENTIAL CRIMINAL JUSTICE INFORMATION, AS DEFINED IN 44-5-103, EXCEPT THAT:

(1) THE NAME OF A REGISTERED SEXUAL OFFENDER IS PUBLIC CRIMINAL JUSTICE INFORMATION, AS DEFINED IN 44-5-103; AND

(2) BEFORE RELEASING FROM A STATE PRISON AN INMATE WHO IS A SEXUAL OFFENDER, IF THE DEPARTMENT BELIEVES THAT RELEASE OF INFORMATION CONCERNING THE INMATE IS NECESSARY FOR PUBLIC PROTECTION, THE DEPARTMENT SHALL PETITION THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE PRISON IS LOCATED OR FOR THE JUDICIAL DISTRICT IN WHICH

THE INMATE INTENDS TO RESIDE FOR AN ORDER ALLOWING THE DEPARTMENT TO RELEASE RELEVANT AND NECESSARY REGISTER INFORMATION REGARDING THE INMATE TO THE PUBLIC. THE COURT SHALL GRANT THE ORDER IF THE COURT FINDS THAT THE INFORMATION IS NECESSARY FOR PUBLIC PROTECTION.

NEW SECTION. **Section 12. Codification instruction.** [Section ~~12~~ 11] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [section ~~12~~ 11].

~~NEW SECTION. **Section 14. Two-thirds vote required.** Because [section 12] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.~~

~~NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to persons convicted of a sexual or violent offense before [the effective date of this act], as well as to persons convicted of a sexual or violent offense after [the effective date of this act], regardless of the date of the crime.~~

-END-